MOTION FILED
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NO. 85-1583

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

JOHNS-MANVILLE SALES CORPORATION
and RAYBESTOS-MANHATTAN, INC. - Petitioners

versus

JAMES LEROY JACKSON --- Respondent

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE KEENE CORPORATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

IRENE C. WARSHAUER
STEVEN P. VINCENT
ANDERSON RUSSELL KILL &
OLICK, P.C.
666 Third Avenue
New York, New York 10017
Telephone: (212) 850-0700
Attorneys for Amicus Curiae
Keene Corporation

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF KEENE CORPORATION

Pursuant to Rule 36.1 of this Court's Rules, Keene Corporation, having been unable to obtain the consent of all the parties, moves for leave to file the attached brief Amicus Curiae in support of the petitioners for the following reasons:

1. Asbestos-related litigation affects thousands of plaintiffs and numerous defendants including Amicus Keene Corporation.

2. Amicus Keene Corporation's arguably minimal contact with the asbestos thermal insulation business has, nonetheless, resulted in it being named a defendant in more than 34,000 lawsuits. Inevitably, the vast majority of these lawsuits seek punitive damages against all defendants.

3. Amicus Keene Corporation believes that the awarding of costly punitive damages against the same defendants over and over again does not further a legitimate federal or state interest and violates the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

4. Amicus Keene Corporation has a substantial interest in any petition or decision which addresses the validity of punitive damage awards in asbestos-related litigation, and its brief presents an important and different perspective on the issues before this Court, and Amicus Keene Corporation respectfully submits that this

motion for leave to file a brief amicus curiae should be granted.

Respectfully submitted,

IRENE C. WARSHAUER
STEVEN P. VINCENT

ANDERSON RUSSELL KILL &
OLICK, P.C.
666 Third Avenue
New York, New York 10017
Telephone: (212) 850-0700

Attorneys for Amicus Curiae
Keene Corporation

Dated: April 25, 1986

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INTEREST OF AMICUS CURIAE AND BACKGROUND OF THE CASE

Amicus Keene Corporation ("Keene") respectfully urges that this Court grant certiorari in this case because the repetitious awarding of punitive damages against defendants in the context of asbestos mass tort litigation is violative of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution.

Keene, like petitioners Johns-Manville Sales Corporation and Raybestos-Manhattan, Inc., has been named a defendant in thousands of asbestos-related lawsuits. Keene itself has never manufactured or sold any thermal insulation products containing asbestos. Its involvement with thermal insulation products containing asbestos stems only from its 1968 stock acquisition of Baldwin-Ehret-Hill, Inc., ("BEH") a company which manufactured such products.

The acquired company was operated as a wholly-owned subsidiary for four years, during which time all asbestos was removed from those products which contained it.

At least 34,000 claimants have already filed asbestos-related suits against Keene and an additional 500 lawsuits are being filed each month.[1] Over one billion

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1. Kakalik, Ebener, Felstiner & Shanley, Costs of Asbestos Litigation, 12 (Inst. for Civ., Just., Rand Corp. 1984) ("Rand Report"). This does not take into account the emergence of over a hundred asbestos-related property damage lawsuits that have been filed by numerous state and local governments which seek not only compensation for the cost of removing asbestos containing materials from public buildings but also punitive damages. The United States Department of Education has predicted that the cost of asbestos abatement in schools could reach $1.4 billion. See In re Johns-Manville Corp., 36 B.R. 727, 739 (Bankr. S.D.N.Y. 1984) (citing U.S. Dept. of Education, Asbestos in The Schools: A Report to Congress 26-27 (1979)). In fact, in two recent property damage cases over $4 million has been awarded in punitive damages against two defendants. Corporation of Mercer University v. National Gypsum Co., No. 85-126-3-MAC (M.D. Ga. April 11, 1986); City of Greenville v. W.R. Grace & Co., No. 6:85-1693-14 (D.S.C. Jan. 24, 1986).

dollars already has been expended by all the asbestos defendants and their insurers in asbestos-related litigation. Kakalik, Ebener, Felstiner, Haggestrom & Shanley, Variation in Asbestos Litigation Compensation and Expenses, (Inst. for Civ. Just., Rand Corp. 1984). As the Fifth Circuit noted below in Jackson v. Johns-Manville Sales Corp., 727 F.2d 506, 524 (5th Cir. 1984) ("Jackson I"), "the scope of this mass litigation is without precedent and practically without dimension."

Although the present amount spent by all of the asbestos defendants is unquestionably massive, the future costs of compensating prospective asbestos claimants potentially will exceed the amount of monies expended by defendants to date. According to the Fifth Circuit's Appendix in Jackson v. Johns-Manville Sales Corp., 750 F.2d 1314, 1339 (5th Cir. 1985) ("Jackson

II"), the New York Academy of Science estimates the social costs resulting from asbestos exposure at between $39 billion and $74 billion over the next 25 years (citing Special Project, An Analysis of the Legal, Social, and Political Issues Raised by the Asbestos Litigation, 36 Vand. L. Rev. 573, 581, n.21 (1983)).

In addition to compensatory claims, plaintiffs alleging asbestos-related injuries usually assert claims of punitive damages against all defendants. Seltzer, Punitive Damages in Mass Tort Litigation: Addressing the Problems of Fairness, Efficiency and Control, 52 Fordham L. Rev. 37 (1983). Professor Seltzer quoted one commentator for the general proposition that "whereas 25 years ago, the punitive damage case was a rarity, today it is an anomaly when one sees a complaint which does not seek punitive damages." Id. at 48

(citing Levit, Punitive Damages: Yesterday, Today and Tomorrow, 1980 Ins. L.J. 257, 259 (emphasis in original)). Thus, many defendants which vary in size from small privately-held companies to large publicly traded companies are sued for punitive damages regardless of whether their presence in the asbestos litigation results from the ownership of a fully integrated asbestos business, including the mining and milling of raw asbestos and long-term manufacture of asbestos-containing end products, or the short-term ownership of a subsidiary company which purchased and made asbestos-containing thermal insulation products.

There is no question that asbestos-related litigation presents a national problem that clearly implicates a federal interest to ensure that all citizens are protected. Amicus Keene believes that the

very awarding of punitive damages repeatedly against the same defendants is against public policy, and constitutionally infirm.

CONSENT OF THE PARTIES

Although counsel to James Leroy Jackson, Respondent, has refused to consent to the filing of this amicus brief, Johns-Manville Sales Corporation and Raybestos-Manhattan, Inc., Petitioners, consent to Keene's submission of this brief.

ARGUMENT

I.

THE ALLOWANCE OF PUNITIVE DAMAGES IN THE MULTIPLE-CASE PRODUCTS LIABILITY CONTEXT VIOLATES THE EXCESSIVE FINES AND THE CRUEL AND UNUSUAL PUNISHMENTS CLAUSES OF THE EIGHTH AMENDMENT AND IS CONTRARY TO PUBLIC POLICY

The Eighth Amendment to the United States Constitution unequivocally prohibits the imposition of excessive fines or cruel

and unusual punishments. It states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII. This Court has observed that "[s]ome punishments, though not labeled 'criminal' by the state, may be sufficiently analogous to criminal punishments in the circumstances in which they are administered to justify application of the Eighth Amendment." Ingraham v. Wright, 430 U.S. 651, 669 n.37 (1977); id., at 685 (White, J. dissenting). Because punitive damages are intended to punish and deter, the imposition of multiple and severe monetary awards against a party must be viewed as tantamount to criminal punishment and therefore subject to the constitutional limitations of the Eighth Amendment. See, e.g., Trop v. Dulles, 356 U.S. 86 (1958) (wherein this Court found the Eighth

Amendment to be applicable in a non-criminal proceeding.)

This Court recently recognized that whether a retrospective "$3.5 million punitive damage award is impermissible under the Excessive Fines Clause of the Eighth Amendment;" and whether the "lack of sufficient standards governing punitive damages awards . . . [under Alabama law] violates the Due Process Clause of the Fourteenth Amendment ... raise[s] important issues which, in an appropriate setting, must be resolved." Aetna Life Insurance Co. v. Lavoie, ___ U.S.L.W. ___ (U.S. April 22, 1986). Keene submits that this case presents the "appropriate setting" to resolve these issues.

The purpose of punitive damages is to punish and deter wanton, willful or grossly reckless conduct. Punitive damages do not serve an appropriate function in the

asbestos litigation and their multiple imposition violates the Eighth Amendment's prohibition of excessive fines. Historically, punitive damages arose in intentional tort cases at a time when the scope of compensable injuries was much narrower and the scope of government regulation was more limited than today. See Roginsky v. Richardson-Merrell, Inc., 378 F.2d 832 (2d Cir. 1967) ("Roginsky").[2] As a result, punitive damages served as a means of indirectly responding to otherwise noncompensable injury and, at the same time, satisfying societal objectives of punishment and deterrence. City of Newport v. Fact Con-

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2. The early punitive damage cases primarily involved "ungentlemanly" behavior of the defendant that was particularly humiliating to the plaintiff. (See Roginsky, 378 F.2d at 838). Persons injured by defective products for the most part do not suffer such personal humiliation and embarrassment; their injuries are different and much more easily susceptible to compensatory calculation based on earning formulas and the like.

certs, Inc., 453 U.S. 247 (1981); Rieser v. District of Columbia, 563 F.2d 462 (D.C. Cir. 1977).

Today, the justification for allowing punitive damages is considerably less obvious. The scope of compensable injuries has grown dramatically so that indirect compensation by way of punitive damages is no longer necessary.[3] The proliferation of criminal and regulatory statutes (such as the Occupational Safety and Health Act)[4] and regulatory agencies with protective functions (such as the Environmental

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3. "Items such as mental pain and suffering, hurt feelings, and wounded dignity are now included in the determination of actual damages, and therefore the compensatory role of punitive damages has been filled by actual damage awards. Stated simply, the purpose for which punitive damages were created no longer exists. The doctrine is an anachronism and should be abolished." Duffey, J.E., Jr., "Punitive Damages: A Doctrine Which Should be Abolished" in Defense Research Institute: The Case Against Punitive Damages (D.J. Hirsch & J.G. Pouros eds., 1969).

4. Pub. L. 91-596 (Dec. 29, 1970).

Protection Agency) demonstrates that the government has assumed greater responsibility for punishment and deterrence than before.[5] The needs that punitive damages were intended to satisfy are now less acute.

Claims for punitive damages, historically, were first made in single party lawsuits. See, e.g., Roginsky, 378 F.2d at 838-39. Where, as here, thousands of products liability plaintiffs are asserting basically the same claim in separate lawsuits all over the United States, the recovery of multiple, cumulatively devastating awards has in fact occurred[6], and

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5. Today, the principal instances where penalties are paid to private plaintiffs are in connection with specific statutes and regulatory schemes, as, for example, the right to treble damages under various state and federal antitrust laws.

6. The Fifth Circuit noted in its appendix in Jackson II that nearly $40 million in punitive damages had been awarded in the asbestos cases tried through

(footnote continued)

the inappropriateness of awarding punitive damages in each such action becomes obvious. As the court in Roginsky correctly observed:

> "The legal difficulties engendered by claims for punitive damages on the part of hundreds of plaintiffs are staggering. If all recovered punitive damages in the amount here awarded [$100,000] these would run into tens of millions. . . . We have the gravest difficulty in perceiving how claims for punitive damages in such a multiplicity of actions throughout the nation can be so administered as to avoid overkill." 378 F.2d at 839.

(footnote continued from previous page) 1982. 750 F.2d at 1338. (citing Special Project, supra, p. 4, at 707 n. 853). That court's appendix indicated that the number of punitive awards has substantially increased from nineteen in 1980-1982 to thirty in 1983. 750 F.2d at 1338-39 (citing Rand Report, supra and Brownstein, "Asbestos Litigation: A Legal Nightmare That Congress is Being Asked to End", 15 Nat'l J. 1942, 1946 (1983)). Such awards are becoming more numerous and larger. Id. For example, in Kaowili v. Johns-Manville Corp., Civ. No. 58147 (Haw. Cir. April 22, 1985) plaintiff received a $3 million punitive damages award against petitioner Raybestos-Manhattan, Inc.

Beyond the obvious injustice inherent in a "civil remedy" which penalizes a defendant repeatedly and in vast excess of either the corresponding criminal penalty or the actual damages sustained, the net effect is to penalize the stockholders of the defendants and the general public in the form of higher consumer prices. Roginsky, 378 F.2d at 841. In Roginsky, the Court stated:

> "[T]he apparent impracticality of imposing an effective ceiling on punitive awards in hundreds of suits in different courts may result in an aggregate which, when piled on large compensatory damages, could reach catastrophic amounts. If liability policies can protect against this risk as several courts have held, the cost of providing this probably needless deterrence, not only to the few manufacturers from whom punitive damages for highly negligent conduct are sought but to the thousands from whom it never will be, is passed on to the consuming public; if they cannot, as is held by other courts and recommended by most commentators, a sufficiently egregious error as to one product can end the business life of a

> concern that has wrought much good in the past and might otherwise have continued to do so in the future, with many innocent stockholders suffering extinction of their investments for a single management sin." Id.

Indeed, two courts have dismissed punitive damage claims in asbestos cases on the ground that they are inappropriate in multiple-plaintiff product liability actions. In Erwin v. Johns-Manville Sales Corp., No. C-3533 (Tenn. Cir. Jan. 27, 1982) the court held that in every asbestos case before the court, punitive damages would not be considered at trial as a matter of law:

> "It is the opinion of this Court that in multiple plaintiff products liability actions the large number of actions and potential compensatory awards serves as sufficient punishment and deterrence and hence an award of punitive damages is unwarranted."

Similarly, in La Brecque v. Johns-Manville Sales Corp., Civ. No. H-77-201, transcript

at 2356-2362 (D. Conn. Feb. 17, 1982), Judge Blumenfeld dismissed plaintiffs' claims for punitive damages, following Judge Friendly's reasoning in Roginsky:

> "[T]he Defendants are open to punishment by way of punitive damages even in jurisdictions which will not limit the amount as they do in Connecticut, in many states throughout the country, and in hundreds, maybe thousands of cases.
>
> Well, you might run into what Mr. Rottner yesterday said, that this would be cruel and unusual punishment, or might be double jeopardy if they're going to be punished in every case for every Plaintiff, because there may be a thousand cases.
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> . . . .
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> So, I mean, it's not just this case, it's hundreds of other cases, and I don't think that punitive damages are designed to be given to one Plaintiff or each one of hundreds of Plaintiffs in order to punish a Defendant for one course of conduct."
> Transcript at 2359.

The court below erroneously rejected this reasoning. While society has favored the

compensation of persons injured by imposing strict liability upon the manufacturer of a product under the assumption that the manufacturer and society are in a better economic position to share the cost of these injuries, W. Prosser, Torts (4th Ed. 1971) § 100, this rationale does not apply to punitive damages which amount to a windfall for the plaintiff. After plaintiff's injuries are compensated, the plaintiff's equities are not greater than the consumers or the innocent stockholders of a manufacturer.

The twin objectives of deterrence and punishment will not be furthered by assessing punitive damages against Amicus Keene and other asbestos litigation defendants because the asbestos defendants have already expended hundreds of millions of dollars to compensate thousands of plaintiffs previously exposed to asbestos-con-

taining products. Furthermore, defendants must continue to compensate injured asbestos plaintiffs in the future. Thus, the payment of compensatory damages alone should serve as a sufficient punishment and deterrent and the large number of lawsuits filed monthly demonstrates that prospective plaintiffs in asbestos cases do not need an additional incentive to bring such actions. The role of compensatory damages under these circumstances accomplishes the purposes sought to be attained through the assessment of punitive damages.

Moreover, the systematic and multiple awarding of punitive damages against the same defendants over and over again is violative of the excessive fines clause of the Eighth Amendment, constitutes cruel and unusual punishment under the same Amendment, and will create numerous and intract-

able legal and economic problems.[7] As the court in Jackson I pointed out, "excessive punishment is antithetical" to the objectives underlying punitive damages. 727 F.2d at 526.

II.

THE STANDARD FOR PUNITIVE DAMAGES IS CONSTITUTIONALLY VOID FOR VAGUENESS

The assessment of punitive damages in a civil action goes beyond mere compensation; it is, instead, a penalty and, as such, brings into operation certain requirements and procedural protections mandated by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.[8]

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7. See, e.g., In re UNR Industries, Inc., No. 82-B-9841 through 82-B-9851 (Bankr. N.D. Ill. filed July 29, 1982); In re Amatex Corp., No. 82-05220-K (Bankr. E.D. Pa. filed Nov. 1, 1982); In re Johns-Manville Corp., Nos. 82-B-11656 through 11676 (BRL) (Bankr. S.D.N.Y. filed Aug. 26, 1982).

8. The Eighth Amendment is cited supra, (footnote continued)

It is immaterial, for constitutional purposes, that the imposition of punitive damages is labeled as civil or is directed against property and not person:[9]

> "Both liberty and property are specifically protected by the Fourteenth Amendment against any state deprivation which does not meet the standards of due process, and this protection is not to be avoided by the simple label

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(footnote continued from previous page) p. 7. The Fifth and Fourteenth Amendments provide as follows:

Amendment V

> ". . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; . . ."

Amendment XIV

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

9. It is evident that criminal statutes and punitive damages share identical objectives -- punishment and deterrence.

> a State chooses to fasten upon its conduct or its statute. So here this state Act whether labeled 'penal' or not must meet the challenge that it is unconstitutionally vague." Giaccio v. State of Pennsylvania, 382 U.S. 399, 402 (1966). (emphasis supplied)

As the Supreme Court stated in Ashton v. Kentucky, 384 U.S. 195, 200 (1966):

> "Vague laws in any area suffer a constitutional infirmity."

The punitive damages alleged in this action are far from insubstantial and hence more than sufficient to warrant constitutional scrutiny.[10] Accordingly, it must be determined whether the standard for punitive damages passes constitutional muster. A review of the standards applied indicates that they are constitutionally deficient.

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10. Respondent Jackson has been awarded $500,000 and $125,000 in punitive damages against Johns-Manville Sales Corporation and Raybestos-Manhattan, Inc., respectively. As stated earlier, $40 million in punitive damages has been assessed against defendants in the asbestos litigation and hundreds of millions of dollars more are sought in punitive awards.

In Mississippi, the standard is defined as acting "maliciously" with ill will or spite, or "wantonly" with a callous disregard for the rights of the plaintiff. Jackson v. Johns-Manville Sales Corp., 781 F.2d 394, 404 (5th Cir. 1986) (Jackson III).[11]

The above standard is constitutionally defective in that it fails to meet the constitutional requirements that a law

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11. Other state punitive damage standards are similarly vague. See, e.g., in California, as acting with "evil motive" or "conscious disregard of safety", G.D. Searle & Co. v. Superior Court of Sacramento County, 49 Cal. App. 3d 22, 122 Cal. Rptr. 218 (1975); in New York, as acting "recklessly" in "gross deviation" from reasonable conduct so as to be "close to criminality", Roginsky, 378 F.2d at 843; in Ohio, as "actual malice" where "a person's conduct is characterized by hatred or ill will, Drayton v. Jiffee Chemical Corp., 395 F. Supp. 1081, 1097 (N.D. Ohio 1975), modified on other grounds, 591 F.2d 352 (6th Cir. 1978); in Pennsylvania, as "outrageous conduct" that consists of "acts done with a bad motive or with a reckless indifference to the interests of others," Chambers v. Montgomery, 411 Pa. 339, 192 A.2d 355 (1963).

be sufficiently definite so as to apprise the public of prohibited conduct and to supply the judge and jury with limits concerning its application:

> "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case. . . . Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce." Giaccio, 382 U.S. at 402-03 (emphasis supplied).

Based on the above standard, a potential target of a punitive damage claim is without adequate guidance as to the type of conduct that is prohibited. For example,

how could Amicus Keene foresee that its purchase of stock of BEH in 1968 could serve as the basis of claims for punitive damages in thousands of lawsuits? The overwhelming uncertainty in determining what constitutes culpable conduct in these instances requires invocation of the void-for-vagueness doctrine. The punitive damage standard thus is essentially no more definitive or predictive than the standard "misconduct," which has been held to be constitutionally infirm. See Soglin v. Kauffman, 418 F.2d 163, 168 (7th Cir. 1969). As the Supreme Court in Giaccio remarked in connection with a similar vague jury instruction:

> "It would be difficult if not impossible for a person to prepare a defense against such general abstract charges as 'misconduct' or 'reprehensible conduct.' If used in a statute which imposed forfeitures, punishments or judgments for costs, such loose and unlimiting terms would certainly cause the statute to fail to measure up to the

> requirements of the Due Process Clause." 382 U.S. at 404.

Like other similarly vague penal standards, the vague standard for punitive damages applied below is constitutionally defective.

III.

PUNITIVE DAMAGES LACK REQUIRED CONSTITUTIONAL PROCEDURAL SAFEGUARDS

The standards for imposing punitive damages are constitutionally infirm for the additional reason that they fail to provide the constitutional safeguards accorded those accused of a crime. Application of such safeguards in the punitive damage context is both appropriate and constitutionally compelled. As one commentator has observed:

> "If the theory and practical operation of the award of punitive damages is substantially the same as the rationale and effect of the criminal sanction, it would seem that any procedural dichotomy should be discarded. Logic and justice compel the

> implication of a uniform procedure.
>
> * * *
>
> "An award of punitive damages, stripped of its specious 'civil' label, constitutes an imposition of a criminal fine in purpose, form, and effect, and is, therefore vulnerable to various constitutional objections." Ford, T.A., "The Constitutionality of Punitive Damages" in Defense Research Institute The Case Against Punitive Damages, (D.J. Hirsch & J.G. Pouros eds. 1969) at 15, 18.

Criminal defendants enjoy important constitutionally derived procedural safeguards. One such safeguard is the protection against double jeopardy guaranteed by the Fifth Amendment to the United States Constitution, which provides in relevant part:

> "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb. . . ."

In contrast, civil defendants in a case where punitive damages are being

sought are provided with no assurance that once they have prevailed in that action on the punitive damages question, they will not be held liable for punitive damages in a second or third action for the same alleged misconduct. Although Amicus Keene has been found not liable for punitive damages in an asbestos-related case brought by plaintiffs in Tennessee,[12] the fact is that Amicus Keene is subject to potential liability with respect to the same penal sanction on the basis of the same conduct in other lawsuits. This is in direct conflict with the constitutional prohibition against double jeopardy.

Moreover, a defendant in a criminal action must be found guilty beyond a reasonable doubt before a penal sanction may attach. See e.g., In re Winship, 397

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12. Campbell v. Johns-Manville Corp., C.A. No. 3-788-185 (E.D. Tenn., Dec. 7, 1978).

U.S. 358 (1970); Jackson v. Virginia, 443 U.S. 307 (1979). In contrast, a defendant in a punitive damage action is not provided with the same evidentiary safeguard. As a result, a defendant in a punitive damages action is faced with massive penal liability that might never be established if a criminal burden of proof were applied. Given the penal nature of punitive damages, such a deprivation is violative of the Constitution.

The Fifth Amendment to the United States Constitution also provides for indictment by a grand jury and protection against self-incrimination:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor shall be compelled in any criminal case to be a witness against himself. . . ."

The Sixth Amendment guarantees the criminal defendant trial by jury, which has

been interpreted to require the unanimous verdict of 12 of his peers. 18 U.S.C. § 31(a). United States v. Thomas, 449 F.2d 1177 (D.C. Cir. 1971); United States v. Sexton, 456 F.2d 961 (5th Cir. 1972). Furthermore, the criminal defendant is presumed innocent until proven guilty. Taylor v. Kentucky, 436 U.S. 478 (1978); Estelle v. Williams, 425 U.S. 501 (1976); In re Winship, 397 U.S. 358 (1970); Coffin v. United States, 156 U.S. 432 (1895).

These valuable and constitutionally derived safeguards have not been made available to the asbestos litigation defendants in actions for punitive damages. Yet, these same defendants are exposed to penalities often in excess of the fine that a related criminal conviction would entail. Such a result is constitutionally impermissible.

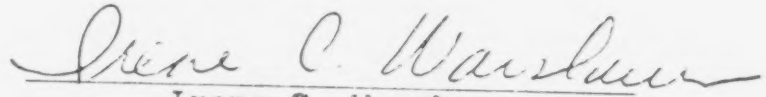
CONCLUSION

The fact that thousands of individuals claim injury from exposure to asbestos-containing thermal insulation products is a national problem which will place demands upon corporate resources for years to come. Although our system of spreading the cost of compensating such injured claimants under a theory of strict liability may serve an important societal end, the imposition of grossly disproportionate and multiple punitive damage awards against defendants not only obstructs that goal, but is constitutionally impermissible because it subjects defendants to excessive and irrational penalties without even providing defendants the constitutional safeguards of the Fifth, Eighth and Fourteenth Amendments.

For the foregoing reasons, Amicus Keene Corporation respectfully prays that

this Court grant the petitions of Raybestos-Manhattan, Inc. and Johns-Manville Sales Corporation for a Writ of Certiorari to review the Judgment and Opinion of the Fifth Circuit Court of Appeals.

Respectfully submitted,



Irene C. Warshauer
Steven P. Vincent
ANDERSON RUSSELL KILL
& OLICK, P.C.
666 Third Avenue
New York, New York 10017
Telephone: (212) 850-0700

Attorneys for Amicus Curiae
Keene Corporation

Dated: April 25, 1986

NO. 85-1583

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

JOHNS-MANVILLE SALES CORPORATION
and RAYBESTOS-MANHATTAN, INC. - Petitioners

versus

JAMES LEROY JACKSON --- Respondent

CERTIFICATE OF SERVICE

I hereby certify that I am a member of the bar of this Court, and that copies of the Motion For Leave to File Brief Amicus Curiae and Brief of Amicus Curiae Keene Corporation were mailed, first-class postage duly prepaid, this 25th day of April, 1986, to the counsel listed on the

attached Service List and that all parties required to be served have been served.

Irene C. Warshauer

IRENE C. WARSHAUER

Attorney for Amicus Curiae
Keene Corporation

SERVICE LIST

DANIEL E. CUPIT
CUPIT & MAXEY
P.O. Box 22666
Jackson, Miss. 39205
(601) 355-1553
Counsel for Respondent
James Leroy Jackson

JOHN H. HOLLOMAN, III
WILLIAM N. REED
WATKINS LUDLAM & STENNIS
20th Floor
Deposit Guaranty Plaza
P.O. Box 427
Jackson, Miss. 39205
(601) 354-3456
Counsel for Petitioner
Johns-Manville Sales Corp.

LIVELY M. WILSON
ROY KIMBERLY SNELL
WINFREY P. BLACKBURN, JR.
STITES & HARBISON
600 West Main Street
Louisville, Kentucky 40202
(502) 587-3400
Counsel for Petitioner
Raybestos-Manhattan, Inc.

ROY C. WILLIAMS
MEGEHEE, BROWN, WILLIAMS & MESTAYER
3112 Canty Street
P.O. Box 787
Pascagoula, Miss. 39567
Counsel for Petitioner Johns-
Manville Sales Corporation